and the limitation period is 3 years. This item — with all respect to the learned judge who held other views — belongs to the well-known category of "money had and received by A to the use of B", which we think is clearly applicable. Consequently, the respondent's claim must be restricted to the term of 3 years next preceding the issue of the writ on March 29, 1967 — his claim for the period before March 29, 1964 being time-barred. He is, therefore, entitled only to overpayments made on rents accrued between April 1, 1964 and December 1966 — or 33 months in all.

Prior to the first increase on June 1, 1960, the lawful rent was $58.25. In 1960 the annual value — which prevailed from 1959 to 1962 — was $1,560 or $130 p.m. Following the formula stated in paragraph (d) the difference between $130 and the monthly rent of $58.25 is $71.75, of which 25 per cent is $17.93. Accordingly, the increase was lawful only to the extent of $58.25, plus $17.93, or a total sum of $76.18.

Thus, from June 1, 1960 onwards, clearly the appellant had been overpaid. It is needless, however to calculate what the total was prior to April 1, 1964, since the claim is barred by limitation. But after April 1, 1964 the recovery of overpayments is not so barred. The appellant was collecting $115 p.m., making a total of $3,795 for 33 months. As the calculation in the last preceding paragraph shows, the last "current rent" was valid only to the extent of $76.18 per month, based on the 1960 current value. We do not think, however, that any drop in the annual value in 1962 — 1965 automatically invalidated the pre-existing rate of lawful rent, which was $76.18. Just as a landlord would have to take steps to raise the rent upon an increase in annual value, so also should a tenant if he desired to avail himself of a drop in such value. Here, the respondent, being the tenant, had let opportunity pass. At the monthly rate of $76.18 over a period of 33 months, the respondent need only have paid a total sum of $2,513.94. But having in fact paid $3,795, he should be refunded the difference of $1,281.06 — provided there are no other relevant factors to be considered.

There remains, however, the fact that the annual value for 1966 had been raised to $4,900 or $408.33 per month. Using again the formula in paragraph (l), the difference between $408.33 and the current rent — *but only to the extent of the last valid rate of $76.18* — amounts to $332.15, of which 25% would be $83.04. This means that the appellant could have charged $76.18 plus $83.04, or a total of $159.22. That sum would then have been *lawful* rent. Of course he could make no *claim* at that rate since he had not taken any steps to raise the rent. Strangely enough, however, his inability to make an affirmative claim could give no corresponding benefit to the respondent. We repeat again the provisions of section 4(4) which reads:—

> "A tenant who has paid his landlord a sum in excess of the rent which may lawfully be received under the provisions of this section may recover such sum from the landlord."

It is to be observed that the respondent's claim to a refund entitles him only to the excess over *what may lawfully be received* by the landlord. Hence, in respect of the 12 months of 1966 the respondent was never overpaid, as he collected only $115 against a lawfully recoverable rent of $159.22. Accordingly, the overpayments for which the respondent is entitled to a refund cover only a period of 21 rather than 33 months, amounting to $815.22.

We accordingly allow the appeal, and set aside the judgment of the court below. Instead, judgment will be entered for the respondent in the sum of $815.22. As to costs, the appellant had paid into court the sum of $1,000. He will consequently be entitled to costs after the date of such payment in and the respondent to his costs up to such date.

The appellant will have also the costs of this appeal, on the lower scale for the High Court.

Appeal allowed.

HOO YAN MENG v. ESAH

[A.C.J. (Winslow J.) October 8, 1969]

[Singapore — District Court Appeal No. 5 of 1969]

Landlord and Tenant — Recovery of possession — Domestic premises — Statutory tenant — Death of — Whether tenancy devolves to member of family — Control of Rent Ordinance (Cap. 242), s. 16(c).

The sole question for decision in this case was whether a member of a deceased statutory tenant's family was protected under section 16(c) of the Control of Rent Ordinance.

Held: a member of the family of a deceased tenant whether contractual or statutory enjoys protection under section 16(c) of the said Ordinance but does not by virtue of this protection acquire any kind of tenancy. The Ordinance compels the landlord to recognise a right on the part of such person to quiet enjoyment. His position is stronger than that of a licensee, he may be described as a "compulsory quasi-tenant."

Cases referred to:—

(1) *Khadijah binte Abdullah* v. *S.I.A. Alsagoff* [1957] M.L.J. 90.

(2) *Foo Kok Hui* v. *Saraswathy & Anor.* [1961] M.L.J. 91.

(3) *Indo Australian Trading Co. Ltd.* v. *Lim Hoon & Anor.* [1961] M.L.J. 259.

(4) *B.T. Hassan* v. *G.A. Scully* [1951] M.L.J. 141.

(5) *Yeo Seow Inn* v. *Chan Khit* [1967] 2 M.L.J. 197.

(6) *Indo Australian Trading Co. Ltd.* v. *Masahat & Ors.* [1962] M.L.J. 123.

(7) *Ramasamy Pillai* v. *Meyappa Chettiar* [1955] M.L.J. 105.

(8) *Tan Khio Soei & Anor.* v. *Ban Hin Lee Bank Ltd.* [1964] M.L.J. 71.

DISTRICT COURT CIVIL APPEAL

Eric Choa (*T.P.B. Menon* with him) for the appellant.

N.A. D'Rozario for the respondent.

Cur. Adv. Vult.

Winslow J.: This appeal poses a problem which has taxed the ingenuity of the courts from time to time during the last 20 years or more, i.e., for as long as the Control of Rent Ordinance (Cap. 242) and its immediate predecessor, the Control of Rent Ordinance, 1947, have been in force in Singapore.

On the one hand, it can be argued that the legislature has not expressed its intentions as clearly as it could have done, whilst on the other, it can be argued with almost equal or greater force that the meaning of the legislation in question is clear despite any ambiguity some people may see in it. I refer, of course, to section 16(c) of the Ordinance which reads as follows:—

"16. In the case of any domestic premises such an order or judgment as is referred to in section 14 of this Ordinance may without prejudice to the provisions of section 15 be made in any of the following additional cases namely:—

(c) where neither the tenant nor any member of his family is residing in the premises or any part thereof."

The appellant's claim for recovery of domestic premises known as No. 40 Everton Road was dismissed by the second civil district judge on the ground that the respondent, who is the daughter of one Awang bin Noor Ali who died whilst a statutory tenant to the said premises in 1963, was protected under section 16(c) of the Ordinance by virtue of her having resided as a member of his family at the time of his death at the said premises and still continuing to reside therein.

It was contended with some vigour by Mr. Eric Choa, counsel for the appellant, that this particular provision is misleading and has been misunderstood in the past. He claimed that whilst this provision confers rights on landlords to recover possession of domestic premises in the circumstances set out therein, it confers no rights whatsoever on tenants.

It may be useful at the outset to set out the agreed facts of the case which were as follows:—

"(1) The defendant accepts the validity of the notice to quit dated 26/9/56, which expired on the 31st October, 1956;

(2) Awang bin Noor Ali died a statutory tenant in 1963,

(3) The defendant is the lawful daughter of Awang bin Noor Ali residing at the time of his death at No. 40, Everton Road and continues to reside at the said premises;

(4) Premises in question are domestic premises."

In the first place, I can think of no reason, in view of the definition of "tenant" in section 2 of the Ordinance, why the tenant in section 16 (c) should not include a statutory tenant and the courts have constantly construed section 16(c) in this way because there is nothing in the context of section 16(c) which requires a different construction. It is clear from *Khadijah binte Abdullah v. S.I.A. Alsagoff*[1] (a Singapore Court of Appeal decision) that a statutory tenant, despite his ceasing to reside in the premises in question, remains under the protection of the Ordinance if a member of his family resides therein, and is within the contemplation of section 16(c) as a tenant.

Secondly, it is clear from this provision that a landlord can only recover possession, where reliance is placed on this ground alone, if neither the tenant nor any member of his family is residing in the premises. It follows, by necessary implication, that the landlord has no right in such circumstances to recover possession if either the tenant or any member of his family resides therein, whatever the intention of the legislature might have been.

In *Foo Kok Hui v. Saraswathy & Anor.*[2] Ambrose J. held that the widow of a statutory tenant who died in 1958 enjoyed the protection conferred by section 16 of the Ordinance by virtue of her residing in the premises with her two children by the deceased after his death. The learned trial judge gave no reasons for his conclusion and it was contended that, because counsel had conceded that the widow was protected by section 16, if the premises were domestic premises, this case was no authority for this proposition and that it was only authority for the question which fell to be considered, *viz.*, whether the premises were used chiefly as a separate dwelling and thereby constituted domestic premises. Although Ambrose J. gave no reasons for his decision as to why the widow was protected, it is implicit from his judgment that he must have regarded the deceased statutory tenant as a tenant for the purposes of section 16(c).

In *Indo Australian Trading Co. Ltd. v. Lim Hoon & Anor.*[3] Chua J. held that no order or judgment for the recovery of possession of any premises comprised in a tenancy can be made or given where the premises are occupied by any of the persons specified in section 2 as members of the tenant's family and that this

restriction is not affected by the death of a tenant. In his judgment Chua J. said:—

"In the definition of 'members of his family' it is to be noted that the words 'widow', 'widower' and 'legal personal representative' are used. To my mind that clearly indicates that the legislature intended that the tenancy should continue after the death of the tenant where the widow continues to reside in the premises. There is no doubt whatsoever that the legislature intended to protect the widow. I am confirmed in that view by a consideration of the judgment of Mr. Justice Jobling in the Federation of Malaya case of *B.T. Hassan v. G.A. Scully*."

Which brings me to a consideration of the judgment of Jobling J. in *B.T. Hassan v. G.A. Scully*.[4] The facts in this case were on all fours with the facts in the current appeal except that the member of the family concerned was a son instead of a daughter of the deceased statutory tenant. Jobling J. reached the same conclusion as that subsequently reached by Chua J. It should be pointed out, however, that Jobling J. was dealing with the case of a son of a deceased statutory tenant, whereas Chua J. was dealing with the widow of a deceased contractual tenant.

I now turn to the case of *Yeo Seow Inn v. Chan Khit*[5] also decided by Chua J. where, after deciding that the premises in question were not rent-controlled, he proceeded to state as follows:—

"But, in case my finding on this point is upset by a higher tribunal then this contention would become relevant and I feel that I should express shortly my opinion on it. I need only say that in my view the widow of a statutory tenant is protected under the Ordinance. When one looks at the definitions of 'tenant' and 'members of the family' there is no doubt that the Legislature intended to protect not only the widow of a contractual tenant but also the widow of a statutory tenant."

It is clear from the two decisions by Chua J. to which I have referred that he adopted the principle laid down by Jobling J. in the *Hassan* case to cover the cases of both a member of the family of a deceased statutory tenant as well as a member of the family of a deceased contractual tenant, where such member resides in the premises after the death of the tenant in question.

It would seem, therefore, on the cases I have cited so far the courts have been unanimous in deciding that a member of the family of a statutory tenant who continues to reside in domestic premises after the death of such tenant enjoys the protection conferred by section 16(c).

There is only one reported case, however, where the court seems to have reached a different conclusion. This was the case of *Indo Australian Trading Co. Ltd. v. Masahat & Ors.*[6] also decided by Chua J. where he held that the husband and the daughter of one Madam Puteh binte Ghani were not protected by section 16 of the Ordinance after having previously reached the conclusion on the facts that Madam Puteh binte Ghani was a statutory tenant of the premises in question. His decision on the case viewed as a whole is undoubtedly correct inasmuch as he held that the landlords were entitled to recover possession.

His Lordship's reasoning in deciding that Madam Puteh binte Ghani was the statutory tenant of the premises, however, appears to be fallacious. She was the daughter of one Gunny Puteh, who was the contractual tenant of the premises. He died in 1929 after which his daughter, Madam Puteh binte Ghani, continued to occupy the premises and to pay rent but such rent was received in the name of her father, whom the landlords still continued to regard as their tenant. Chua J. held that when the Control of Rent Ordinance, 1947 came into force on 8th September, 1947, Madam Puteh binte Ghani became a statutory tenant as she was then in possession of the premises and was a member of Gunny Puteh's family within the meaning of section 2 of that Ordinance. It is clear from this that Chua J. regarded Madam Puteh binte Ghani as being entitled to the protection conferred on her as a member of the family of Gunny Puteh, her father, who died in 1929, by virtue of her having continued to reside in the premises throughout until the coming into force of the 1947 Ordinance. Strictly speaking, and I think this is where Chua J. fell into error, although Madam Puteh binte Ghani may have been protected as a member of her father's family who continued to reside in the premises at the time the 1947 Ordinance came into force, she did not become a statutory tenant.

Thomson C.J., as he then was, said in *Ramasamy Pillai v. Meyappa Chettiar*[7]:—

"Before a person can claim to be a statutory tenant of premises four conditions must be fulfilled:—

(a) he must have been a tenant of the premises;

(b) his tenancy must have been determined, not assigned or anything of the sort;

(c) he must have remained in possession of the premises after the determination of his tenancy; and

(d) the provisions of the Ordinance must prevent him being deprived of possession by the landlord of the premises."

From this it seems clear that Madam Puteh binte Ghani could never have become a statutory tenant because as Chua J. himself held, she had never been accepted as a tenant of the premises. Chua J.'s decision on the case as a whole is undoubtedly correct in that the husband and the daughter of Madam Puteh binte Ghani could not have been said to be members of the family of any tenant, whether contractual or statutory. This case, therefore, in a way, follows Chua J.'s

findings in the two other cases decided by him which I have cited earlier. Looked at from this point of view, Chua J. has been consistent in his findings that a member of the family of a contractual or statutory tenant who resides in the premises on the death of that tenant is protected. Where the fallacy lay, however, was in his regarding Madam Puteh binte Ghani as a statutory tenant and not as one merely protected as a member of her father's family.

This brings me to a consideration of the general principle to be extracted from all these decisions. In the *Hassan* case and in the *Lim Hoon* case decided by Jobling J. and Chua J. respectively, both their Lordships had no doubt whatsoever that the legislature intended to protect the son and the widow respectively, and that the legislature intended that the tenancy should continue after the death of the tenant where a member of his family remains in occupation or continues to reside in the premises.

Ambrose J. in the case of *Foo Kok Hui* and Chua J. in the case of *Yeo Seow Inn* to which I have already referred, avoided any reference to a tenancy continuing after the death of the tenant but merely contented themselves with stating that the widow of a statutory tenant is protected under the Ordinance.

It seems to me that the true principle to be extracted from all these decisions is that a member of the family of the deceased tenant, whether contractual or statutory, enjoys protection under section 16(c) but does not, by virtue of this protection, acquire any kind of tenancy merely by virtue of such protection. Such a person cannot be removed by the landlord so long as he tenders the equivalent of the monthly rent to the landlord and resides in the premises.

Mr. T.T.B. Koh in his publication entitled "Rent Control in Singapore" first published in 1966 has suggested that such a person is a licensee but has pointed out certain problems which might arise as, for example, where the deceased tenant has sublet parts of the premises and, very correctly, has suggested that these difficulties should be resolved by legislation.

There is obviously a *lacuna* in the law but this is far from saying that a member of the family is not protected under section 16(c) or that a landlord necessarily has any right to recover premises from such a member of the family merely because his exact status has not been clearly defined by the legislation in question.

Since the landlord cannot recover premises from such a person so long as he continues to reside therein and to pay rent and abides by such other obligations as formerly existed between the deceased tenant and the landlord, it follows that the Ordinance compels the landlord to recognise a right on the part of such person to quiet enjoyment. He is not merely a licensee. He is in a stronger position than that. He is, to all intents and purposes, a tenant even though he is neither a contractual nor a statutory tenant. If I may be permitted to coin an expression to describe him, he is a "compulsory quasi-tenant" (even though the Ordinance has not clearly defined his status) who enjoys the protection of section 16(c) which carries with it a right to quiet enjoyment like any other tenant. This is probably what Jobling J. and Chua J. had in mind in the *Hassan* case and in the *Lim Hoon* case when they held that the legislature intended that the tenancy should continue after the death of the tenant where a member of his family continues to reside in the premises.

It was urged before me by counsel for the appellant on the authority of *Tan Khio Soei & Anor. v. Ban Hin Lee Bank Ltd.*[3] a Federal Court decision, that the right of a statutory tenant, being a purely personal right to possession of the premises, is extinguished on his death and that on the facts in the appeal before me, the statutory tenancy of Awang bin Noor Ali became extinguished in 1963. Counsel for the respondent accepted this position but nevertheless maintained that the respondent was protected under section 16(c). The Federal Court decision, however, did not turn on any consideration of section 16(c) because the premises with which that decision was concerned did not constitute domestic premises and the court was not required to determine any such question as arose in the present appeal, *viz.*, whether a member of the family of a statutory tenant who dies is protected under section 16(c). I have therefore come to the conclusion that that judgment is of no assistance to the appellant or of any relevance so far as the facts in this appeal are concerned.

Whilst I am of the view that the matter should be put beyond doubt by an amendment of the Ordinance so as to define with clarity the status of a member of the family of the deceased tenant who is protected under section 16(c), I am sufficiently satisfied on the authorities which I have reviewed earlier that members of the family of a tenant who dies are, in fact, protected by section 16(c) of the Ordinance. I am also inclined to agree with the learned second district judge, where she expressed the feeling that the consequence of holding otherwise would be undesirable on the ground that landlords would resort to terminating existing contractual tenancies, thereby reducing their tenants to the status of statutory tenants so that when they die, landlords could recover possession with impunity.

For all these reasons, the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Oehlers & Choa; Director of Legal Aid.*

ANG BOCK SENG v. MURUGIAN VALAMBALL

[A.C.J. (Winslow J.) October 21, 1969]

[Singapore—District Court Civil Appeal No. 16 of 1969]

Landlord and Tenant — Recovery of possession — Greater hardship — Application by landlord on ground that he requires premises for occupation by himself — Whether greater hardship would be caused to landlord or tenant — Control of Rent Ordinance (Cap. 242), s. 15 (1) (j).

This was an appeal against the judgment of the learned district judge giving the respondent landlord possession of certain premises at Buffalo Road of which the appellant was a monthly tenant. The ground on which the claim for possession was based was under section 15(1) (j) of the Control of Rent Ordinance, in that the landlord required the premises for occupation by herself or her family. In this case the landlord had given evidence to show that she required the premises for her own occupation. She had retired from Government service and had to vacate Government quarters; subsequently she obtained a Housing Board flat but she had been asked to vacate it as she had failed to disclose the fact that she was the owner of the house at Buffalo Road. She had earlier sold another house belonging to her to pay off the mortgage on that house.

Held, dismissing the appeal: (1) the respondent landlord in this case had discharged the onus of proving reasonable requirement of the premises for occupation by her and her family;

(2) in the circumstances of this case the landlord had acted reasonably in selling the other house belonging to her and in any case it was for the tenant to show greater hardship in this respect by showing that the landlord's sale was unreasonable and the tenant had failed to do so;

(3) it had not been shown that the district judge misdirected himself in law or on facts.

Cases referred to:—

(1) *Arathoon Sons Ltd.* v. *Buan Lee Seng Ltd.* [1950] M.L.J. 307.

(2) *Kerrigan* v. *Nelson* [1946] S.C. 388.

DISTRICT COURT CIVIL APPEAL

J.B. Jeyaretnam for the appellant.

M.N. Samy for the respondent.

Cur. Adv. Vult.

Winslow J.: This is an appeal against the judgment of the learned First Civil District Judge of 1st August, 1969 when he found in favour of the respondent/plaintiff on her claim for possession of No. 14 Buffalo Road of which the appellant/defendant was a monthly tenant.

The sole ground on which the claim was based was under section 15 (1) (j) of the Control of Rent Ordinance (Cap 242) the material portions of which are as follows:—

> "where the landlord of the premises reasonably requires the same for occupation by himself or any member of his family . . . and the tenancy has been determined by not less than one year's notice to quit and there has been no change by purchase in the ownership of the premises within one year next preceding the date of such notice."

The onus is of course on the landlord to show that he reasonably requires the premises as aforesaid. But, the proviso to this paragraph states that an order or judgment shall not be made or given if the court is satisfied that having regard to all the circumstances of the case, including the question whether other accommodation is available for the landlord or the tenant, greater hardship would be caused by granting it than by refusing to do so and it is common ground that the onus of so satisfying the court lies on the tenant.

There were accordingly two matters to be considered by the district judge. First of all, he had to be satisfied that the respondent/plaintiff reasonably required the premises in question for occupation by herself or any member of her family at the relevant time, i.e., the time of the hearing. If authority is required for this proposition, it will be found in *Megarry's* "The Rent Acts" 10th Edition at page 284. The hearing of this case commenced on 4th November, 1968 after which date it was adjourned for further hearing from time to time till 11th February, 1969 and then further adjourned from that date till 28th February, 1969 when the court reserved judgment and, as I have said earlier, that judgment was delivered on 1st August, 1969.

The second matter to be decided, assuming that the trial judge was satisfied that the respondent/plaintiff had discharged the burden on her of proving that she reasonably required the premises during the hearing of this case, was the question of greater hardship to which I have earlier referred. The circumstances to be considered in deciding whether the appellant/defendant, i.e., the tenant in this case, has discharged the burden on him of proving greater hardship to himself, are also, according to *Megarry* at page 294, those existing at the time of the hearing. *Megarry* further states that, in considering the landlord's circumstances, it will often be irrelevant to consider past events such as his sale of another house which would have provided an alternative home for him and, on the English authorities, *Megarry* concludes that the court is entitled to take into account in considering the tenant's circumstances, past events such as his failure